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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)
)
Reallocation of Television Channels) MM Docket No. 97-157
60-69, the 746-806 MHz Band)

Comments of
Association of America's Public Television Stations
and Public Broadcasting Service

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The Association of America's Public Television Stations ("APTS") and the Public Broadcasting Service ("PBS") (collectively "APTS/PBS") hereby file their Comments in response to the Commission's *Notice of Proposed Rulemaking*, released July 10, 1997, in the above-captioned proceeding ("Notice").

Introduction and Summary

APTS/PBS are nonprofit organizations whose members comprise virtually all of the nation's 175 noncommercial educational television licensees. APTS represents public television stations in legislative and policy matters before the Commission, Congress, and the Executive Branch, as well as engages in planning and research activities on behalf of its members. PBS provides program distribution and other services to its members and is a leader in the development of new and improved television technologies and efficient use of the television broadcast spectrum.

In its Notice, the Commission proposes reallocating the 746-806 MHz band, comprising television Channels 60-69. The Commission plans to allocate 24 MHz to the public safety services and the remaining 36 MHz to the fixed, mobile and broadcasting services to be assigned through competitive bidding. The Commission seeks comment on, inter alia, issues related to protecting the interests of existing and proposed television licensees in that band in light of the reallocation of Channels 60-69 and the transition to digital television.

APTS/PBS have been active participants in all phases of the digital television ("DTV") proceeding, MM Docket No. 87-268, and filed comments and reply comments representing the interests of the nation's public television stations.¹ Additionally, they have joined in selected filings of the Broadcasters Caucus, a broad coalition of television broadcast stations and networks, in which APTS/PBS are members.

In their filings with the Commission in the DTV Proceeding, APTS/PBS have discussed the importance of protecting public television licensees with NTSC licenses, DTV assignments, or translators outside the core spectrum (Channels 2-46 or Channels 7-51) and have proposed several measures that, if adopted by the FCC, would provide relief to these public television licensees in the transition. As APTS/PBS discuss herein, many of these proposed measures are particularly important to those public television licensees that have NTSC licenses, DTV assignments, or translators in Channels 60-69.²

¹ *Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service*, MM Docket No. 87-268, *Fifth Report and Order*, FCC 97-116, and *Sixth Report and Order*, FCC No. 97-115, released April 21, 1997 ("DTV Proceeding" or "Digital Proceeding").

² APTS/PBS also support the Comments in this proceeding filed today by the Association for Maximum Service Television, Inc., and the National Association of Broadcasters.

I. Existing Public Television Stations with NTSC Licenses and Permits or DTV Assignments in Channels 60-69 Must Be Fully Protected and Provided with Flexibility to Transition Effectively During the Reallocation

A. The Commission Must Ensure Public Television Services in Channels 60-69 Full Protection from Interference Throughout the Transition

In its DTV Proceeding, the Commission recognized the importance of assuring the public continued access to the television services it currently enjoys during the transition to a digital world. Thus, the Commission held that it would fully protect the service areas of all existing NTSC stations and all new DTV allotments on Channels 60-69.³ In this Notice, the Commission reiterates that position, again holding that an entity acquiring an authorization to use spectrum in the 746-806 MHz band would be required to protect both NTSC and DTV stations operating on Channels 60-69 (Notice at ¶17). APTS/PBS urge the Commission to enforce that requirement vigorously and strictly, not only with respect to existing public television stations with NTSC or DTV allotments on Channels 60-69, but also with respect to public television permittees with construction permits for NTSC facilities on those channels, as proposed by the Commission (Notice at ¶21).

As the Commission recognizes in its Notice (¶15), “permitting a diverse array of service and technologies to share the same spectrum could pose technical challenges in avoiding interference.” Unless the Commission vigilantly protects public television operations on Channels 60-69 until those stations are operating on in-core DTV channels, the public will lose valuable public television services it currently enjoys. Such a loss of service would

³ See DTV Proceeding, *Sixth Report and Order*, ¶80.

disserve the public interest and undermine the thirty-five year congressional commitment to making public television service available to all Americans.

B. The Commission Must Provide Flexible Means for Public Television Stations with NTSC Licenses and Permits or DTV Assignments in Channels 60-69 to Transition to Digital

1. Stations With A DTV Assignment in Channels 60-69 And An NTSC Channel Inside The Core

Given the well known funding uncertainties faced by public television, APTS/PBS are very concerned that some public television stations with DTV allotments in Channels 60-69, but NTSC channels inside the core, will be unable to raise the funds necessary to construct two DTV stations, one on the Channel 60-69 assignment and one in-core, as required by the Commission. Since these stations will be required to give up their Channel 60-69 assignments and to cease NTSC operation at the end of the transition, their inability to construct a second DTV station would result in the loss of public television service at the end of the transition. Such a result is inconsistent with established Commission and congressional policy promoting nationwide public television service.⁴

⁴ While APTS/PBS believe that the best solution for the problems faced by public television stations with DTV assignments outside the core is to afford these stations the maximum flexibility to find channels in the core, APTS/PBS also urge the Commission to require the commercial entities that acquire the reallocated spectrum to reimburse public television licensees for any costs they may incur in changing channels. Additionally, the Commission should require the acquiring commercial entities to reimburse the large number of public television translator stations that will be displaced as a result of the initiation of DTV service. While a less secure alternative than receiving a DTV channel within the core, the availability of that reimbursement will provide some additional assurance that public television stations will be able to continue operations after the transition. The Commission has indicated that it will undertake the reimbursement issues in a separate rulemaking (DTV Proceeding, *Sixth Report and Order* at ¶143

In order to avoid loss of service and to provide greater assurance that these stations will be able to continue providing public television service once the nation's television system has switched to digital, APTS/PBS urge the Commission to allow stations with DTV channels in Channels 60-69 but NTSC licenses or construction permits inside the core to relinquish their DTV allotments without constructing and to switch to DTV operation on their in-core NTSC channels at any point in the transition.

Since the Commission will allow stations with NTSC channels within the core to use either their NTSC or DTV channels at the end of the transition, adoption of this proposal for public television licensees is consistent with the Commission's DTV allotment scheme. Moreover, the Commission will be able to reclaim the unused DTV channels in Channels 60-69 for early reallocation. Further, granting this option to the public television stations with DTV assignments in Channels 60-69 will not interfere with the transition to digital television. The commercial stations in the market, whose operation will drive the demand for DTV receivers, will remain obligated to operate DTV stations in accordance with the Commission's time schedule.⁵

2. Stations With an NTSC License in Channels 60-69 and a DTV Assignments Inside the Core

Conversely, the Commission should allow public television stations with NTSC channels in Channels 60-69 and DTV assignments inside the core, as specified by the Commission, to operate an NTSC station on the in-core DTV

⁵ The Commission should allow the licensee to decide when to convert to DTV. That business decision will require consideration of a number of factors, including the DTV set penetration in the market, the costs of operating in a DTV mode as compared to an analog mode, and other unique business factors, which the licensee is in the best position to consider.

channel during the transition and to switch operation to DTV on that same channel at any point during the transition, as long as no additional interference is caused. Alternatively, these public television stations should be permitted to defer construction of their in-core DTV facility beyond the current construction deadline and to activate their in-core DTV station at any time during the transition. These options should also be given to new public television permittees holding construction permits on Channels 60-69, as suggested by the Commission in its Notice (§21).

Either of these formulations would permit a public television station the flexibility (a) to seek funding to construct and operate a DTV station simultaneously with the continued operation of its NTSC facilities, or (b) to effectuate a transition to DTV without incurring the costs of dual station operation where the station concludes it cannot afford the costs of operating two stations. The public would not be materially disadvantaged by affording such flexibility to public television stations, as stations opting not to maintain a dual operation during the transition would nevertheless convert to in-core DTV operation by the conclusion of the transition period and their NTSC channels in the Channel 60-69 spectrum would be recoverable at that time for reallocation.

II. Noncommercial Translators in Channels 60-69 Must Be Given Flexibility in Finding Channels to Transition to Digital

A. Noncommercial Translators are Vital in the Distribution of Public Television Service

Noncommercial translators play a very important role in delivering noncommercial television service to millions of homes. Public television stations make extensive use of translator facilities to fill in white areas within their service areas and to extend service to rural, sparsely populated areas in an

economical way. Currently 119 public television stations—about one-third of all public television stations—use 786 translators to carry their programming. Many of those translators serve isolated areas where there is no other over-the-air television service and often no cable service.

State public television networks typically strive to provide service to their entire state without regard to the population density of any area. In many areas of the country, it is simply not practical to accomplish this with full service facilities. State public television networks thus frequently use translators as the only practical and economical means of providing public television service to sparsely populated areas. Other public television stations also use translators to reach unserved areas outside their Grade B contours and to serve areas within their Grade B contours that cannot receive a reliable signal due to terrain or other factors.

Approximately 25% of the 786 noncommercial translators, about 197 translators, operate on Channels 60-69. The Commission found that these translators will be displaced in the reallocation if they cannot operate without interference to the new service entrants. APTS/PBS are very concerned about the displacement not only of these 197 noncommercial translators, but also of the devastating effect that displacement will have on networks of translators in which one translator feeds others.⁶

In comments filed in response to the Sixth Notice in the DTV Proceeding by noncommercial stations KUED and KULC show the effect of the Commission's allotment plan on the 110 translator stations that they operate in

⁶ For example, noncommercial station KNME-TV, Albuquerque, New Mexico, has 63% (15 of 24) its translators in Channels 60-69. Additionally 29% of the community licensed translators retransmitting KNME's signal operate on Channels 60-69. In addition, many daisy chain translator systems exist where the receive aspect down the line would be affected by reallocation of the KNME transmit channels.

Utah, which serve 20% of the state's population and 80% of the state's area. Because many of those translators are fed by other translators, the loss of a single translator may have a "domino effect," causing a loss of service to all of the translators fed by a displaced translator. Thus, the effect of the loss of a single translator may be magnified several-fold. In the case of KUED and KULC, noncommercial television service would be lost in large portions of Utah.

B. The Commission Should Take Steps to Ameliorate the Impact of Reallocation of Channels 60-69 on Noncommercial Translator Service.

There are a number of measures that the Commission has taken in the digital television proceeding that will lessen the impact of the reallocation of Channels 60-69 on the transmission of noncommercial television service by television translators (Notice ¶18). APTS/PBS request that the Commission adopt an additional measure to aid noncommercial translators' continued operation—a preference for public television translators in migration to in-core channels at anytime during the transition.

1. APTS/PBS Support the Commission's Decision to Grant Translators Additional Flexibility in Continuing Operations and Seeking Alternative Channels in an Expedited Manner

APTS/PBS support the Commission's decision to permit translators to continue operating within Channels 60-69 until such time as a DTV station or a new entrant is ready to commence service on the channel being used by the translator or another channel subject to interference by the translator's operations.⁷ There is no reason to force translators off the air prematurely, and

⁷ See DTV Proceeding, *Sixth Report and Order*, at ¶142.

the chances that they will be able to find a suitable replacement channel for their services may increase if they can operate on their current channel until NTSC channels may be recovered.

Additionally, APTS/PBS support the Commission's decision to permit displaced translator and low power television licensees and permittees to file for a replacement channel in the same area without being subject to competing applications.⁸ When an existing translator is simply seeking a replacement channel upon being displaced from its channel by a new user, it should not be forced to compete with applicants proposing new low power or television translator stations.

2. The Commission Should Also Adopt a Priority for Displaced Noncommercial Translator Stations Over Commercial Translators and LPTV Stations in Moving to Replacement Channels Anytime During the Transition

In addition to these two measures adopted by the Commission, APTS/PBS request that the Commission take an additional step toward ensuring the continued operation of noncommercial translators. Public television translator applicants in Channels 60-69 should be given a preference over commercial translator and low power applicants in applying for available NTSC or DTV channels in the core band at anytime during the transition, if the noncommercial translator was displaced by a new user and had provided noncommercial television service to an otherwise unserved area. Such a preference is justified by the strong and continuing federal policy favoring the provision of public television service to as much of the country as feasible.

⁸ *Id.* ¶144.

When Congress first provided funding for educational television in 1962, it stated that the funding was provided to assure noncommercial educational television service to “the greatest number of persons. . . .”⁹ Thirty years later, when Congress enacted the Public Telecommunications Facilities Act of 1992, it added a new subsection to the Section 396 of the Communications Act, declaring it to be “in the public interest for the Federal Government to ensure that all citizens . . . have access to public telecommunications services. . . .”¹⁰

Given the importance Congress has thus placed on making public television service universally available and the increasing role distance learning is playing in enhancing the quality of education in rural areas, the Commission should give public television translator stations priority over other translators or low power stations in moving to replacement channels when a public television translator is displaced. Further, public television translators stations should be permitted to apply for alternative channels on a protected basis at any time, even prior to the actual construction or operation of DTV stations or new entrants to the Channel 60-69 band that are likely to displace the noncommercial translators.¹¹

⁹ Educational Television Facilities Act, Pub. L. No. 87-447, 76 Stat. 64 (1962), *reprinted in* 1962 U.S.C.C.A.N. 79, 81.

¹⁰ Public Telecommunications Act of 1992, Pub. L. No. 102-356, 106 Stat. 949 (Aug. 26, 1992) *reprinted in* 1992 U.S.C.C.A.N. 839, 840. This policy is also reflected in the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 106 Stat. 1460 (Oct. 5, 1992), which requires cable carriage of public television programming and the reservation of capacity on direct broadcast satellites for educational use.

¹¹ All the translator licensees should be required to demonstrate is that there is a reasonable likelihood that its existing translator will be required to shut down if a DTV allotment is activated. The licensee would, of course, be required to relinquish the channel on which the translator is currently operating, but otherwise could move to the new channel without facing any comparative consideration or waiting for a filing window to open.

III. The Commission Should Allot Alternative Channels, if Available, to Noncommercial Applicants With Pending NTSC Applications in Channels 60-69

As discussed in the Commission's Notice (§21), 78 applications for new NTSC stations in the Channel 60-69 bandwidth are pending, a number of which are noncommercial. APTS/PBS strongly urge the Commission to allot alternative channels, if available, to noncommercial applicants for construction and operation either, at the applicant's option, as a DTV facility or as an NTSC facility with the ability to convert to digital operation during the transition.

If a substitute channel is identified, the Commission should waive the cut-off date and permit the applicant to amend its application to specify that channel without opening up the filing to competing applications. Such a waiver would be warranted given the fluid and unpredictable state of the proposed table of digital allotments at the time the filing window would close.

Public television licensees often take years to lay the groundwork necessary to undertake a noncommercial application for a vacant reserved channel. APTS/PBS strongly believe that it would be unjust, as well as contrary to the interests of the affected communities, for the Commission to dismiss a pending application to use that channel to provide noncommercial service.

During the last four decades, the Commission has been steadfast in its reservation of spectrum for noncommercial use in order to provide a means for public television to grow. Indeed, since the Commission first reserved channels for noncommercial use in 1952, it has never dereserved a noncommercial channel without substituting another reserved channel.¹² In the recent

¹² See *Deletion of Noncommercial Reservation of Channel 16, 482-488 MHz, Pittsburgh, Pennsylvania*, 1996 FCC Lexis 4078 (July 24, 1996) ("Pittsburgh case"), at §18.

Pittsburgh case, the Commission denied a request for dereservation of a noncommercial channel after reviewing the strong congressional policy encouraging the growth of public broadcasting.¹³

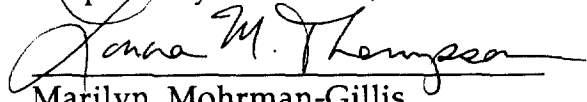
Maintaining public access to noncommercial programming is a bedrock congressional and Commission policy. Under these circumstances, the greatest effort should be made to find alternative channels to satisfy pending noncommercial NTSC applications for the Channel 60-69 spectrum and to make noncommercial service available to the communities that have invested so much effort in their desire for public television service.

¹³ *Pittsburgh case*, at ¶20.

CONCLUSION

APTS/PBS urge the Commission to adopt the measures proposed herein for public television stations with NTSC licenses, DTV assignments, or translators in Channels 60-69 in order to assist in the transition to digital television.

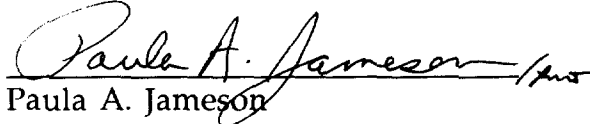
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